IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number 89-10019
WARDELL LINDSEY PHILPOT, SR.	)	
	)	
Debtor	)	
	)	FILED
BROOKLAND FINANCIAL CORPORATION	)	at 4 O'clock & 59 min P.M.
	)	Date: 7-18-89
Movant	)	
	)	
vs.	)	
	)	
WARDELL LINDSEY PHILPOT, SR.	)	
	)	
Respondent	)	

ORDER

Brookland Financial Corporation ("BFC"), a creditor and a party in interest in this Chapter 13 proceeding has objected to confirmation contending that this Chapter 13 proceeding was not filed in good faith and that the proposed Chapter 13 plan does not provide for all of the debtor's projected disposable income for at least a three year period to be paid to the Chapter 13 trustee. Debtor has objected to the claim of BFC and sough reinstatement of the §362 stay to recover a repossessed automobile. Confirmation hearing was held and at the close of the evidence this court entered a ruling but retained this matter for the purpose of entering an order setting forth findings of fact and conclusions of law.

During the preparation of the final order, it became necessary for me to

review this debtor's previous Chapter 13 file, Case No. 184-00465.[1] At the hearing on BFC's objection to confirmation, counsel to BFC relied upon certain facts in the debtor's previous Chapter 13 proceeding relative to a creditor Barclays-American Financial, Inc. In making my ruling, I relied in part upon the facts as relayed by counsel for BFC relative to the claim of Barclays-American Financial, Inc. in the previous Chapter 13 case. A review of the prior Chapter 13 file reveals that I represented Barclays-American Financial, Inc. in that proceeding.

Pursuant to 28 U.S.C. §455(a) a judge should recuse himself sua sponte in any proceeding in which his impartiality might reasonably be questioned. The standard is an objective one of whether an average person who knew all the facts would doubt the judge's impartiality. The fact that I did not recall that I had represented Barclays-American Financial, Inc. in the prior bankruptcy case is irrelevant. The fact that I did represent Barclays-American Financial, Inc. and the fact that the

circumstances of that debtor/creditor relationship in the prior case impacted greatly on my decision in this case could cause a reasonable person to question my impartiality which is a sufficient basis to require recusal. In doing so I realize the expense and inconvenience caused the litigants; however, in this instance the broader concern for the retention of public confidence in the impartiality of the judiciary takes precedence.

The orders of this court issued at the close of the confirmation hearing held June 29,

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[1]The court may take judicial notice of prior bankruptcy petitions filed by a debtor when considering a subsequent petition. See, In re: Jackson, 49 B.R. 298 (Bankr. Kans. 1985) . Se also Allen v. Newsome 795 F.2d 934 (11th Cir. 1986). (District court may take judicial notice of prior habeas corpus applications filed by petitioner in proceeding on habeas corpus petition).

1989 are vacated. These matters are referred to the Honorable Lamar W. Davis, Jr., Chief Bankruptcy Judge for rehearing at the earliest available date.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 18th day of July, 1989.